

## **Excerpts from the Hearing on Equitable Relief of 1/31/03**

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BARBARA WILHELM, :  
Plaintiff :  
: :  
v. : 01-CV-1057  
COMMONWEALTH OF PA, et al., :  
Defendants :  
:

TRANSCRIPT OF PROCEEDINGS

HEARING ON EQUITABLE RELIEF

BEFORE: HON. SYLVIA H. RAMBO, Chief Judge

DATE: January 31, 2003

PLACE: Courtroom Number Three  
Federal Building  
Harrisburg, Pennsylvania

COUNSEL PRESENT:

NATHAN C. PRINGLE, JR., Esquire  
For - Plaintiff

SUSAN J. FORNEY, Esquire  
For - Defendants

Vicki L. Fox, RMR  
Official Reporter

Wilhelm - Recross

1 BY MS. FORNEY:

2 Q Ms. Wilhelm, I am handing you a document which has been  
3 marked Defendant Exhibit 94. Have you ever seen that  
4 before?

5 MR. PRINGLE: Excuse me, Your Honor. Just for the  
6 record, I have never seen that document before today.

7 MS. FORNEY: Your Honor, I faxed this document to  
8 Mr. Pringle.

9 MR. PRINGLE: When did you fax it to me?

10 MS. FORNEY: When I said I was going to. I told  
11 you I had another exhibit, and it was faxed when we talked  
12 yesterday.

13 MR. PRINGLE: Your Honor, the problem with faxing  
14 a document, we had the same problem before. It is an  
15 uncertain method of communicating with me. What I did -- the  
16 way it works in my office --

17 THE COURT: It's a lot faster than mail.

18 MR. PRINGLE: At least, she could have told me  
19 what the position was.

20 MS. FORNEY: Mr. Pringle, I told you I was going  
21 to fax you the document. You were expecting a document from  
22 me.

23 MR. PRINGLE: The problem with sending it -- you  
24 sent it to me what day? Was it yesterday?

25

## Wilhelm - Redirect

1 MS. FORNEY: Whenever we discussed exhibits, and  
2 you told me about some exhibits that you were going to be  
3 presenting.

4 MR. PRINGLE: Then that was yesterday. Yesterday  
5 afternoon, she said she was going to fax additional  
6 documents. Unfortunately, the way faxes are received in my  
7 office, they go to a server. Once the server receives the  
8 documents, they then mail it to me specifically to my  
9 desktop.

10 In this case, I notified the secretary that  
11 e-mails would be -- faxes would be coming in. I never got  
12 this document.

13 My point is that Ms. Wilhelm cannot testify about  
14 a document that I haven't seen and she --

15 THE COURT: Sustain the objection.

16 MS. FORNEY: Your Honor, my only question was had  
17 she seen it before. No other questions, Your Honor.

18 THE COURT: I will permit you to question only  
19 about the last offer of reinstatement.

20 REDIRECT EXAMINATION

21 BY MR. PRINGLE:

22 Q Ms. Wilhelm, with respect to the offer of reinstatement  
23 described in the letter from Ms. Forney, did you read that  
24 letter?

25 A I did refresh myself on it briefly, yes.

Miller - Direct

1 FORNEY: Nothing, Your Honor.

2 THE COURT: You may step down.

3 MR. PRINGLE: At this time, Your Honor, plaintiff  
4 has no further witnesses.

5 THE COURT: Does the Commonwealth have any  
6 witnesses?

7 MS. FORNEY: Yes, Your Honor, we do. I would like  
8 to call Jeffrey Miller.

9

10 JEFFREY MILLER, called as a witness, being duly  
11 sworn, testified as follows:

12

13 THE CLERK: Would you state your name, please?

14 A Jeffrey B. Miller.

15 THE CLERK: Thank you.

16 DIRECT EXAMINATION

17 BY MS. FORNEY:

18 Q Sir, are you currently employed?

19 A Yes, I am.

20 Q What is your job?

21 A I am a Lieutenant Colonel with the Pennsylvania State  
22 Police serving as the Acting Commissioner.

23 Q And when did you -- when did you begin in that  
24 employment?

25 A I began my employment in 1984, but my current position

Miller - Direct

1 on January 21st of this year.

2 Q And how did you obtain that position?

3 A I was nominated by Governor Edward Rendell.

4 Q Is your position considered cabinet level?

5 A Yes.

6 Q Have you been nominated to be the Commissioner of the  
7 State Police?

8 A Yes.

9 Q And you are presently awaiting confirmation of that  
10 nomination?

11 A That's correct.

12 Q As Acting Commissioner of the State Police, have you  
13 made any appointments of Deputy Commissioners?

14 A Yes, I have.

15 Q And who have you appointed as Deputy Commissioners?

16 A I have appointed Major Ralph M. Periandi as a Deputy  
17 Commissioner of Operations, Major Henry D. Oleyniczak as the  
18 Deputy Commissioner of Staff and Major Cynthia L. Transue as  
19 the Deputy Commissioner of Administration.

20 Q Prior to becoming the Acting Commissioner of the  
21 Pennsylvania State Police, were you the Director of the  
22 Office of Legislative Affairs for the State Police?

23 A Yes, I was.

24 Q And were you the Director at the time that Ms. Wilhelm  
25 was dismissed from her position as Legislative Specialist?

Miller - Direct

1 A Yes.

2 Q Did you recommend her dismissal?

3 A No.

4 Q From the time she left employment until the time you  
5 assumed your current position as Acting Commissioner, was  
6 there a Legislative Specialist in the Office of Legislative  
7 Affairs?

8 A No.

9 Q Are you aware of any current plans to recreate that  
10 position?

11 A No, there are none.

12 Q Do you know whether there is presently any other  
13 positions for Legislative Specialists within the State  
14 Police?

15 A There are none.

16 Q Sir, as you know we are here to determine what, if any,  
17 equitable relief should be afforded the plaintiff in this  
18 case. What is the Commonwealth's position regarding  
19 reinstatement of Ms. Wilhelm to employment?

20 A The Commonwealth is prepared to offer reinstatement of  
21 Ms. Wilhelm to Commonwealth employment.

22 Q And when will that reinstatement be effective?

23 A The reinstatement would be effective May 1st of 2000  
24 which was the date of her separation from the Department.

25 Q Now do you understand that there -- strike that. So

Miller - Direct

1 BY MS. FORNEY:

2 Q Let me ask you to talk about the retroactive component  
3 of reinstatement. I believe you said it would -- you talked  
4 about how it would affect her back pay.

5 Is it your understanding that her retirement  
6 credits would be restored?

7 A Yes. It is my understanding that her retirement  
8 credits would be restored. It would be as if she never  
9 separated from Commonwealth service for any length of time.

10 Q What is your understanding about how it would affect  
11 your employment records?

12 A Her employment records would be purged to the degree  
13 that there would be no coding or any other information that  
14 would indicate she separated from Commonwealth service at any  
15 time.

16 Q What is the Commonwealth prepared to do prospectively  
17 with regard to Ms. Wilhelm's reinstatement?

18 A The Commonwealth is willing to offer a position as a  
19 Deputy Press Secretary within the Department of Corrections.  
20 During the first six months of that employment, as I stated  
21 earlier, the State Police would pay the costs of salary,  
22 benefits, etcetera; however, the State Police would have no  
23 role whatsoever in the supervision, direction or in any other  
24 capacity manage the day-to-day employment operations of Ms.  
25 Wilhelm in any way, shape or form.

Miller - Direct

1           At the end of that six month period, it is  
2 extremely likely that that would be the position that Ms.  
3 Wilhelm would hold going forth into the future. However, if  
4 that wouldn't happen for whatever reason, the Commonwealth  
5 then is prepared to make a guarantee of finding comparable  
6 state employment for her immediately.

7           (Job Description for DOC's Information Specialist  
8 was introduced as Defendant Exhibit 94.)

9 BY MS. FORNEY:

10 Q       Now you mentioned a job as a Deputy Press Secretary  
11 with the Department of Corrections. I am handing you a  
12 document which has been marked Defendant Exhibit 94.

13           MR. PRINGLE: I don't have a copy of that.

14           MS. FORNEY: It is among your documents.

15           MR. PRINGLE: It is. I am sorry. I apologize.

16 BY MS. FORNEY:

17 Q       Could you identify this document for me?

18 A       Yes. It is a job description for the office -- or  
19 excuse me -- the position of Deputy Press Secretary within  
20 the Press Office in the Department of Corrections.

21 Q       And is this the position that you were referring to  
22 that the Commonwealth would be willing to reinstate Ms.  
23 Wilhelm to prospectively?

24 A       Yes, it is.

25 Q       And at what salary would she be restored?

Miller - Direct

1 A She would be restored at the same salary with the same  
2 benefits that she had on May 1st, 2000.

3 Q And would that salary reflect any increases that she  
4 would have received had she remained employed?

5 A Yes, it would. It would take her from where she was on  
6 May 1st, 2000 and bring her up-to-date from a salary basis.

7 Q You were Ms. Wilhelm's supervisor for several months;  
8 were you not?

9 A Yes, I was.

10 Q You have been in attendance at the trials and hearings  
11 held in this case and have heard Ms. Wilhelm testify  
12 regarding her prior job experience and her skills; have you  
13 not?

14 A Yes, I have.

15 Q Would you tell me why you think this job would be  
16 appropriate to Ms. Wilhelm?

17 MR. PRINGLE: Objection. He has not been  
18 established as an expert on resource matters or able to  
19 analyze job descriptions or analyze Ms. Wilhelm's resume.

20 THE COURT: It doesn't require an expert. He is  
21 asked with his knowledge, his experience and supervision over  
22 the plaintiff as to why he thinks her skills that he has  
23 observed would fit within this job description.

24 MR. PRINGLE: Your Honor, he hasn't testified that  
25 he is familiar with the job itself.

Miller - Direct

1                   THE COURT: Can you establish whether he knows  
2 anything about the job description or is family with that  
3 job?

4 BY MS. FORNEY:

5 Q       Sir, have you reviewed this job description?

6 A       Yes, I have.

7                   THE COURT: I think he needs a little more than  
8 just reviewing it. Is he familiar with any facet of the  
9 position?

10 BY MS. FORNEY:

11 Q       Do you have any familiarity with the position?

12 A       I do from the sense that I have a Press Secretary  
13 within the Pennsylvania State Police who reports directly to  
14 me. I have been familiar with working with Press Secretaries  
15 within the Governor's Office over the last several years.

16 Q       In reviewing this job description, does it appear to  
17 correspond with the sort of duties that you have experienced  
18 Deputy Press Secretaries performing?

19 A       It does.

20                   THE COURT: Go ahead.

21 BY MS. FORNEY:

22 Q       If you recall my question, you may answer.

23 A       I think I do. Basically in reviewing the job  
24 description for the Deputy Press Secretary, in my opinion, I  
25 think it is a position that does suit Ms. Wilhelm's skills.

Miller - Direct

1 In my observation of her employment with the Department, she  
2 is extremely good at expressing things verbally. She works  
3 well in analyzing information. This job requires those two  
4 things.

5 She is also very skilled with computer  
6 technology. She enjoys that part of the work as she has  
7 relayed to me in the past. I have seen her put on training  
8 seminars using computer equipment and Power Point  
9 presentations. She is very good at that. She seems to enjoy  
10 doing that.

11 And much of what the job would entail would be  
12 collating information, looking at the website within the  
13 Department of Corrections and making content changes and  
14 suggestions for improvements, writing news releases,  
15 preparing informational packages for distribution to the  
16 press, setting up press conferences and releases, working in  
17 support of the Secretary of Corrections in defining issues  
18 and press strategies for dealing with issues and topics that  
19 would come to light, and standing in for the Press Secretary  
20 in meetings with executives within the Department of  
21 Corrections.

22 All of these things I believe in my observations  
23 of Ms. Wilhelm are things that she would do well.

24 Q Now you mentioned in your testimony that while she  
25 worked -- if she chose to work in this job at the Department

Miller - Cross

1 A No, sir.

2 Q Why is that?

3 A Because she would be working for the Department of  
4 Corrections.

5 Q But you would be paying her salary?

6 A For a period of six months. That is only a clerical  
7 function if you will. We have no oversight, and there would  
8 be no change in her employment status because of that fact.

9 Q And why is it that you are limiting this to six months?

10 A Why is it that we are limiting our particular portion  
11 of this part to six months, is that what you are asking me?

12 Q Yes.

13 A Because initially, we had made numerous attempts with  
14 the Office of Administration previously to try to find a  
15 comparable job that would fit Ms. Wilhelm's skills. We did  
16 not have the level of cooperation that I hoped we would have  
17 at the end of the previous administration.

18 I think because people did not want to make  
19 commitments for positions at the end of an administration.  
20 That somewhat hampered our ability to proceed.

21 The new administration just took over. I think  
22 the record reflects the fact that we have moved very quickly  
23 with the new administration. But one of the things we wanted  
24 to do before we identified the appropriate position was make  
25 an offer that the State Police would pay the salary and

Miller - Cross

1       benefits for the first six months, thereby relieving the  
2       agency that would be the agency where Ms. Wilhelm would be  
3       placed from that responsibility up front. We just put that  
4       out on the table before we actually found the right position,  
5       and this position specifically.

6                 Once we found this position, we didn't want to  
7       renege on anything we put out on table. But it is my  
8       understanding that the Department of Corrections, should that  
9       be the place where she ultimately is placed and stays, would  
10      pick that -- they have a vacancy that they would be paying  
11      for anyway. It just so happens that the first six months of  
12      the compensation would come out of the State Police budget in  
13      the overall Commonwealth scheme rather than the Department of  
14      Corrections budget.

15                It would be as if she worked for the Department of  
16      Corrections and was being paid and compensated by the  
17      Department of Corrections for all intent and purpose.

18   Q       Why doesn't the Department of Corrections want to pay  
19      for the first six months?

20   A       I'm sorry?

21   Q       Why doesn't the Department of Corrections want to pay  
22      for the first six months?

23   A       I am not sure that they don't want to pay for the first  
24      six months. I am just saying to you, sir, when we approached  
25      the new administration, we made an offer kind of as a way to

Miller - Cross

1 say hey, we want you to take a look at what we're trying to  
2 do here. If you have a comparable position that we believe  
3 is and our human resources folks on all ends of the spectrum  
4 think is comparable, then we would be happy to pay that for  
5 the first six months.

6 We just made that as an offer before we had the  
7 appropriate position. It is not to me -- to my knowledge, it  
8 is not that the Department of Corrections doesn't want to pay  
9 it. In fact, they may very well want to pay it.

10 I think they were going to fill this position one  
11 way or another and would have been paying for it anyway. It  
12 is not really that it is a huge difference for them. But she  
13 would be working for that first six months just on the  
14 clerical bookkeeping side of it, we would be paying the  
15 salary. But we wouldn't have any supervisory authority or  
16 her position wouldn't change in any way because of that.

17 Q Isn't the Deputy Press Secretary a very sensitive  
18 position for an agency?

19 A What do you mean by sensitive?

20 Q Wouldn't the agency want to know who is coming in  
21 there, know more, have information about that person, have a  
22 chance to interview before they commit to accepting an  
23 employe as a Deputy Press Secretary?

24 A Well, Ms. Wilhelm's resume and background is extremely  
25 good. When they looked at it, they were comfortable that she

1                   THE COURT: Okay. You have one more or you have  
2 no more?

3                   MS. FORNEY: No more, Your Honor.

4                   THE COURT: Okay. Since you have no more  
5 witnesses, are you going to have any rebuttal witnesses?

6                   MR. PRINGLE: Just one, Your Honor.

7                   THE COURT: Who?

8                   MR. PRINGLE: Ms. Wilhelm.

9                   THE COURT: The lady in the back of the courtroom  
10 that was requested to stay may leave.

11                  THE COURT: Is there any reason why you can't put  
12 her on rebuttal while you are looking over your exhibits? I  
13 won't preclude you from --

14                  MS. FORNEY: Actually, I think I am prepared to  
15 move them, Your Honor.

16                  THE COURT: Okay.

17                  MS. FORNEY: Defendant Exhibit 45.

18                  THE COURT: Didn't you just use that for  
19 impeachment purposes, or you used it in an argument  
20 concerning the need to supplement? I am not too sure it is  
21 necessary; is it?

22                  MS. FORNEY: It really was used for impeachment to  
23 and to support the objection. You are right, Your Honor.  
24 Exhibits 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58,  
25 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73,

1       74, 75, 76, 77, 79, 80, 81, 82, and 94, Your Honor.

2                  THE COURT: Any objection?

3                  MR. PRINGLE: Yes, Your Honor. We object to -- if  
4 I refer to Defendant Exhibit 82 which Ms. Johnston used for  
5 her testimony, she identified the four classifications at the  
6 bottom of the exhibit as positions that she projected might  
7 be available for future examination. And there are  
8 corresponding I guess classification descriptions which are  
9 Defendant Exhibits 74, 75, 76, 77, 79, 80 which we object to  
10 on the basis that it was beyond her area of expertise. And  
11 her testimony regarding the possibility of these positions  
12 being open for examination is speculative and irrelevant.

13                 THE COURT: With regard to Exhibit 82, I will  
14 admit that except delete the four positions that are  
15 scheduled for examination 2003-2004 and any related exhibits  
16 that go to those positions. All other exhibits you have  
17 objected to is overruled.

18                 Exhibit 82, the positions with the double asterisk  
19 and any relating job descriptions will not be admitted.  
20 Anything else?

21                 MR. PRINGLE: I would like to move for the  
22 admission of Defendant Exhibit 53.

23                 THE COURT: 53, what is that?

24                 MR. PRINGLE: It is a Bureau of Labor Statistics  
25 publication.